IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : ELECTRICITY MATTER

Date of Decision : January 16, 2007

W.P.(C) 344/2007

YOGESH JAIN ..... Petitioner
Through Mr. Laliet Kumar, Advocate.

versus

BSES YAMUNA POWER LTD. ..... Respondent
Through Mr. Amar Gupta and Mr. A. Varma, Advocates.

Dr. S. Muralidhar, J (ORAL)

1. The prayer in this writ petition is for a writ to quash the electricity bill of Rs Rs.4,08,621/- raised against the connection bearing K.No.11410C030033 installed at T-27, Gali No.10, Industrial Area, New Rohtak Road, Anand Parvat, Delhi. A preliminary objection is raised by learned counsel for the Respondent as to the maintainability of this writ petition. According to him, the dispute involved in the petition can be referred to the Consumer Forum constituted under Section 42(5) of Delhi Electricity Act, 2003 (`Act').

2. Learned counsel for the petitioner submits that the meter installed in the premises is defective and consequently the bill raised is erroneous. He says this kind of a dispute is not within the scope of the jurisdiction of the Forum. He refers to Section 26(6) of the Indian Electricity Act, 1910 (IE Act) which provides that, in the event of a defective meter, the dispute would be referred for the opinion of an Electrical Inspector. It is submitted that this provision has not been continued under the Electricity Act, 2003 and therefore dispute arising out of a defective meter is not intended to be adjudicated upon by the Forum constituted under Section 42(5) of the Act.

3. The second aspect of the matter is that, according to the petitioner, dues which are older than 2 years prior to the date of the bill cannot be sought to be recovered in terms of Section 56 of the Act. He submits that this issue, although raised before the Forum in certain other matters, is not being examined by it. He maintains that it is only this Court which can, under Article 226, examine this aspect. He places reliance upon the judgment of this Court in M.C.D. v. H.D.Shourie 53(1993)

DLT 1 to contend that the jurisdiction of the High Court under Article 226 of the Constitution is not ousted in the event of a dispute arising out of a defective electric meter.

4. This Court is of the view that the preliminary objection of the respondent requires to be sustained. The reasons are these. Section 42(5) of the Act imparts a statutory character to the Consumer Forum constituted thereunder. The challenge in this petition is admittedly not to the validity of this provision or even to the constitution of the Forum thereunder. In exercise of the powers conferred by Section 181 read with Section 42(5) of the Act, the Delhi Electricity Regulatory Commission(DERC) has framed the Delhi Electricity Regulatory Commission (Guidelines for establishment of Forum for redressal of grievances of the consumers and Ombudsman) Regulations 2003 (`Regulations'). Clause 3(f) of the Regulations defines a `complaint' thus:

"(f) "complaint" means any grievance in writing made by a complainant that--

(i) an unfair trade practice or a restrictive trade practice has been adopted by the licensee in providing electricity service;

(ii) the electricity services hired or availed of or agreed to be hired or availed of by him suffer from defect or deficiency in any respect;

(iii) a licensee has charged for electricity services mentioned in the complaint, a price in excess of the price fixed by the Commission;

(iv) electricity services which are hazardous to life and safety when availed, are being offered for use to the public in contravention of the provisions of any law for the time being in force or of any license;

(v) violation of any law or license requiring the liecensee to display the information in regard to the manner or effect of use of the electrical services;

(vi) Breach of any obligation by the licensee, which adversely affects any consumer or which the Forum may consider appropriate to be treated as a complaint."

5. A plain reading indicates that the definition of the word "complaint" is a comprehensive one. In particular Clause 3(f)(ii), which talks of "the electricity services hired or availed of or agreed to be hired or availed of by him suffer from defect or deficiency in any respect", clearly contemplates a dispute arising even out of a defective meter. There is absolutely nothing to the contrary indicated in any provision of the Act which would preclude the Forum from entertaining a dispute arising out of a defective meter. In fact, the words "defect" and "deficiency" have both been defined under Clause 3(j) & (k) to mean as under:

"(j) "defect" means any fault, imperfection or shortcoming in the quality, quantity, or standard of service, equipment or material which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or under any license or as is claimed by the distribution licensee in any manner whatsoever in relation to electricity service;

(k) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or under any license or has been undertaken to be performed by distribution license in pursuance of a contract or otherwise in relation to electricity service or performance standard; viz Interruption/failure of Power supply, Voltage complaints, metering problems including meter shifting, charges/payments (billing problems), new connections/extensions in load, notice of supply interruptions, violations of Electricity Supply Code, contravention of Act, rules or regulations made there under with regard to consumer interest;" (emphasis supplied)

6. In view of the above comprehensive definition of the expressions 'complaint', 'defect' and 'deficiency', there can be no manner of doubt that disputes involving a defective meter and the bills purportedly raised on the basis of such meters can be examined by the Consumer Forum established under Section 42(5) of the Act. The contention of the petitioner in this regard is hereby rejected.

7. It is next submitted that whereas Section 26(6) of I.T. Act contemplates an independent authority (the Electrical Inspector) to examine a dispute concerning a defective meter, there is no such parallel provision under the Act. It is further submitted that there is no provision in the Regulation which can permit the Forum to require the examination of a defective meter by an independent expert. It appears on a plain reading of the Regulations that even this submission is not correct. Clauses 9(5) and (8) of the Regulations spell out the procedure to be followed by the Forum, and read as under:

"(5) On receipt of the comments from the licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum shall pass appropriate orders for disposal of the grievance, as far as possible, within 60 days of filing the complaint.

(8) The Forum may issue such interim orders pending final disposal of the complaint as it may consider necessary."

8. It is clear from the above two clauses that the Forum can order an enquiry or local inspection to determine if a meter is in fact defective as complained of by a consumer. It is expected that while ordering a local enquiry, the Forum would direct it to be carried out by an independent expert, unconnected with either the consumer or the electricity supplier. That should allay the apprehensions of the petitioner about the power of the Forum to have the defective meter independently checked.

9. It is then submitted that although Regulation 9(11) contemplates the Forum having to frame a procedure "conforming to the principles of fair play and justice for efficient discharge of its functions", the Forum is yet to devise such a procedure. There is no merit in this submission. The Regulations framed by the DERC underscores the basic principle of fair play and justice. If a consumer is aggrieved by any order of the Forum, which according to the consumer is not in conformity with fair play and justice, it is always open to the consumer to assail such order of the Forum on that ground.

10. As regards the applicability of Section 56 of the Act and the defence available to a consumer in terms of that provision, there can be no manner of doubt that if such a contention is raised before the Forum, it is bound to deal with it in accordance with law. It hardly needs to be emphasised that the Forum is, as is every other quasi judicial authority, enjoined by the law to act in a just and fair manner. The Forum is bound to take note of all statutory provisions and judicial decisions in performing its functions and in making and pronouncing its decisions. All the contentions of the petitioner on the basis of any statutory provision or decided case of the Court can be raised before the Forum which would then deal with those submissions in accordance with law.

11. A reference is made to the judgment of the Division Bench of this Court in Suresh Jindal v. BSES Rajdhani Power Ltd. 132 (2006) DLT 339(DB) where the Court has negatived the contention that there existed a legal lacuna during the transitionary period before the new legal regime came into being. It was observed in paras 62 & 63 as under:

"62. The submission of the learned Counsel for the appellant that there is a legal vacuum on account of non-framing of Regulations under Sections 53 and 55 of the Indian Electricity Act, 2003, has no merits. In our opinion, framing of Regulations under Sections 53 and 55 is not a condition precedent to a Discom's function and power to determine what is a correct meter and of changing meters. No doubt, once regulations have been framed the BRPL has to comply with the same. The BRPL entered into the shoes of the erstwhile DVB in pursuance to a statutory scheme promulgated under the provisions of DERA. BRPL as such had all the power with regard to the metering specifications, power to replace meters, etc. In addition, BRPL has the power to instal correct meter under Sections 20,21, 22-24 and 26 of the Indian Electricity Act, 1910, Sections 14 to 16, 60 and 63 of DERA, Rule 10(2) of the Transfer Scheme, Sections 26 and 49 of the Electricity (Supply), 1948, Condition 22 and 23 of DRSU, Condition of Supply and Sections 14, 55, 163 and 185 of the Electricity Act, 2003.

63. Hence in our opinion, there is no legal vacuum. The learned counsel for the respondent has relied on the judgments of the Supreme Court in The Mysore State Road Transport Corporation v. Gopinath Gundachar Char, AIR 1968 SC 464 (vide paragraph 3) and UPSEB v. City Board Mussoorie & Ors., AIR 1985 SC 883 (at paras 7 and 9), and we agree that these decisions apply to the facts of this case."

12. The above decision further clarifies the position that the respondent is bound by those provisions of the erstwhile Indian Electricity Act, 1910 that are not inconsistent with the Electricity Act, 2003, particularly in the context of electricity meters. Finally it must be said with reference to the decision of this Court in M.C.D. v. H.D.Shourie, that the issue is not whether this Court has jurisdiction under Article 226 of the Constitution to entertain a writ petition that questions an electricity bill on the ground that the meter is defective. The question, however, is whether the Court should exercise its jurisdiction when there is an efficacious alternative remedy available to the petitioner. It has been consistently held by this Court as well as by the Hon'ble Supreme Court that in the latter event the High Court would not exercise its jurisdiction under Article 226 of the Constitution. The observations in M.C.D. v. H.D.Shourie case will have to be construed in light of the fact that when the said decision was rendered, the Electricity Act, 2003 was not on the statute book and there was no Forum similar to the one under Section 42(5) of the Act to which a consumer of electricity could take the dispute for adjudication.

13. In that view of the matter the preliminary objections raised by the respondent to the maintainability of this writ petition is sustained. This writ petition, therefore, cannot be entertained for the reason that the petitioner has an alternative efficacious statutory remedy available to him before the Consumer Forum created in terms of Section 42(5) of the Electricity Act, 2003.

14. The petitioner is permitted to withdraw this petition with liberty to approach the Forum with the dispute raised in the present petition. The petitioner shall file an appropriate application before the Forum within 10 days from today and the Forum will soon thereafter take up the said application for consideration along with any other application that the petitioner may file for appropriate interim relief. Till such time the Forum takes up the matter, status quo as regards the petitioner's electricity connection shall be maintained by the Respondent.

15. With the above directions the writ petition is dismissed as withdrawn with liberty as prayed for. Application stands disposed of.

Sd./-
S. MURALIDHAR, J

JANUARY 16, 2007